STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Barry Dunn	:	
	:	
v.	:	**A.A. No. 14 - 072**
	:	
Department of Labor and Training,	:	
Board of Review	:	

O R D E R

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED,

that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 9th day of January, 2015.

By Order:

____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

____/s/_____
Jeanne E. LaFazia
Chief Judge

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F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. In this case Mr. Barry Dunn urges that the Board of Review of the Department of Labor and Training erred when it found that he left his employment at Atlantic Home Loans without good cause and was therefore barred from receiving unemployment benefits pursuant to Gen. Laws 1956 § 28-44-17. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. These matters have been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons that

follow, I conclude that the Board of Review's decision is supported by reliable, probative, and substantial evidence of record and should be AFFIRMED; I so recommend.

I
FACTS AND TRAVEL OF THE CASE

An outline of the facts and travel of this case may be stated briefly: Claimant worked as a mortgage banker for Atlantic Home Loans for five months. His last day of work was Friday, November 8, 2013. From November 25, 2013 through January 8, 2014 he worked for the Bank of England. He filed a claim for unemployment benefits on January 9, 2014 but on February 13, 2014 a designee of the Director determined the Claimant was disqualified from receiving benefits pursuant to Gen. Laws 1956 § 28-44-17 because he left Atlantic before receiving a bona fide offer of work from the company which did become his employer, Bank of England. See Claimant Decision, February 13, 2014, in record as Department's Exhibit No. 2A.

Claimant filed a timely appeal and a hearing was held by Referee Gunter A. Vukic on March 12, 2014. During the hearing, Claimant testified telephonically, as did a representative of the employer — Ms. Kim Campigotto, its Payroll Generalist. In his March 13, 2014 decision, Referee Vukic made the following

findings of fact:

> Claimant worked as a mortgage banker. Claimant last worked Friday, November 8, 2013, the payroll week ending Sunday, November 10, 2013. Claimant was interviewing with the Bank of England for a residential loan officer position.
>
> Claimant was visiting family in Georgia and returned Saturday, November 23, 2013. Claimant was in negotiations with the Bank of England during the week ending November 16, 2013 and met with them on or about November 24, 2013. November 20, 2013 the claimant was to endorse each page of the agreement and return to the Bank of England representative. Claimant was subsequently hired by the Bank of England. Claimant worked for the new employer from November 25, 2013 through January 8, 2014.
>
> The claimant resigned during the weekend of November 9/10 2013. Employer representative gave formal notice to the human resource official through e-mail November 12, 2013. The human resource department requested a written resignation several times. November 22, 2013 the claimant provided the written resignation through e-mail.

Referee's Decision, March 13, 2014, at 1. Based on these findings, Referee Vukic made the following conclusions:

> * * *
> In order to show good cause for leaving employment, the claimant must show that the work had become unsuitable or that the claimant was left with no reasonable alternative but to resign. The burden of proof rests solely on the claimant. Insufficient testimony and no evidence have been provided to support either of the above conditions.
>
> Credible testimony and evidence support the claimant resigned prior to a formal job offer and his acceptance. The fact the claimant failed to respond to the employer's request for a written resignation until

> the Friday before beginning a new job does not alter the fact that he resigned prematurely and prior to going to Georgia for eight days. There is no dispute that some time following his resignation he was offered new employment that he accepted that effective November 25, 2013.

Referee's Decision, March 13, 2014, at 2. Accordingly, the Referee affirmed the decision of the Director and found that claimant was disqualified from receiving benefits because he had quit his position without good cause.

Claimant filed a timely appeal and on April 18, 2014 the Board of Review, through a majority of its members, issued a decision affirming the Referee's decision — finding it to be a proper adjudication of the facts and the law applicable thereto; moreover, the Referee's decision was adopted as the Decision of the Board. Board of Review Decision, April 18, 2014, at 1. The third member dissented, expressing the view that Claimant's "negotiations with his new employer had advanced to the point that new employment had in fact been obtained." Board of Review Decision, April 18, 2014, at 1 (Dissent of Member Representing Labor). Thereafter, Mr. Dunn filed a complaint for judicial review in the Sixth Division District Court.

II

APPLICABLE LAW

A

General Rule

Our review of this case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on voluntary leaving without good cause; Gen. Laws 1956 § 28-44-17, provides:

> **28-44-17. Voluntary leaving without good cause.** — An individual who leaves work voluntarily without good cause shall be ineligible for waiting period credit or benefits for the week until he or she establishes to the satisfaction of the director that he or she has subsequent to that leaving had at least eight (8) weeks of work, and in each of those eight (8) weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in chapter 12 of this title for performing services in employment for one or more employers subject to chapters 42 – 44 of this title. * * * For the purposes of this section, 'voluntarily leaving work without good cause' shall include voluntarily leaving work with an employer to accompany, join or follow his or her spouse in a new locality in connection with the retirement of his or her spouse, or failure by a temporary employee to contact the temporary help agency upon completion of the most recent work assignment to seek additional work unless good cause is shown for that failure; however, that the temporary help agency gave written notice to the individual that the individual is required to contact the temporary help agency at the completion of the most recent work assignment to seek additional work.

In the case of Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597-98 (1964), the Rhode Island Supreme Court noted that a liberal reading of good cause would be adopted:

> To view the statutory language as requiring an employee to establish that he terminated his employment under compulsion is to make any voluntary termination thereof work a forfeiture of his eligibility under the act. This, in our opinion, amounts to reading into the statute a provision that the legislature did not contemplate at the time of its enactment.
>
> In excluding from eligibility for benefit payments those who voluntarily terminate their employment without good cause, the legislature intended in the public interest to secure the fund from which the payments are made against depletion by payment of benefits to the shirker, the indolent, or the malingerer. However, the same public interest demands of this court an interpretation sufficiently liberal to permit the benefits of the act to be made available to employees who in good faith voluntarily leave their employment because the conditions thereof are such that continued exposure thereto would cause or aggravate nervous reactions or otherwise produce psychological trauma.

Later, in Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975), the Supreme Court elaborated that:

> The Employment Security Act was intended to protect individuals from the hardships of unemployment the advent of which involves a substantial degree of compulsion.
> Murphy, 115 R.I. at 37, 340 A.2d at 139.
>
> and

> * * * unemployment benefits were intended to alleviate the economic insecurity arising from termination of employment the prevention of which was effectively beyond the employee's control." Murphy, 115 R.I. at 35, 340 A.2d at 139.

Thus, voluntarily leaving a position is a circumstance which generally makes one ineligible for unemployment benefits, because it is viewed as being volitional, and not caused by necessity.

B

Exception to the General Rule

But, there is an exception to this rule which is pertinent to Mr. Dunn's circumstances — that an employee who quits in order to assume a new position does so with good cause. Although our Rhode Island Supreme Court does not seem to have accepted (or rejected) this principle, previous decisions of this Court have applied this principle in cases considered under section 28-44-17,[1] as have cases from other jurisdictions.[2]

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[1] Cf. Deion v. Department of Employment Security Board of Review, A.A. No. 82-406, slip op. at 4-5 (Dist.Ct. 09/22/1983)(McOsker, J.)(Board of Review found claimant plumber not entitled to benefits; Affirmed, where record supported Board's determination that claimant left part-time position with grocery store without a definite commitment to a new, full-time position).

[2] See 76 Am. Jur. 2d Unemployment Compensation § 119 and cases cited therein. See also Harrison v. Thurmond, 252 Ga. App. 402, 556 S.E. 2d 490, 491 (Ga. App. 2001)(Applying Caldwell v. Hospital Author of Charlton County, 248 Ga. 887, 287 S.E.2d 14 (1982), Court finds Claimant eligible even

But, in order to invoke this rule, the claimant must have had a definite job commitment.[3] Anything less is deemed not to furnish good cause to quit.

III
STANDARD OF REVIEW

The standard of review by which the court must proceed is established in Gen. Laws § 42-35-15(g), a section of the state Administrative Procedures Act, which provides as follows:

> **42-35-15. Judicial review of contested cases. —**
> * * *
> (g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;

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though he left prior employment voluntarily, to accept new position).

[3] Medeiros v. Department of Employment and Training Board of Review, A.A. No. 94-228, slip op. at 7 (Dist.Ct. 05/19/1995)(DeRobbio, C.J.)(Claimant quit to take new job; denial of benefits affirmed, where claimant quit before he got start date on new job, had only "expectation" of new employment; Perry v. Department of Employment and Training Board of Review, A.A. No. 90-143, slip op. at 4-5 (Dist.Ct. 10/15/1991)(DeRobbio, C.J.)(Denial of benefits affirmed where Claimant gave notice after merely hearing about availability of another job.

> (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court "* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.' "[4] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[5] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[6]

The Supreme Court of Rhode Island recognized in Harraka, supra, 98 R.I. at 200, 200 A.2d at 597, that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

> * * * eligibility for benefits is to be determined in the light of the expressed legislative policy that "Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family." G.L. 1956, § 28-42-

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4 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

5 Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

6 Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968). Also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

> 73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

IV
ISSUE AND ANALYSIS

A
The Issue

The Board of Review (adopting the decision of Referee Vukic as its own) found that Claimant quit his position without good cause. And as we have seen, Mr. Dunn did not allege that his position with Atlantic had become unsuitable. Referee Hearing Transcript, passim. Instead, he left because he thought the position with Bank of England held greater promise.[7]

Now, in its ruling denying benefits to Mr. Dunn, the Board did tacitly accept the theory that quitting in order to move to a new position can constitute

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[7] Unfortunately, his tenure at Bank of England was to be short-lived — Mr. Dunn was not retained beyond the eight weeks specified in his original contract. See discussion of ramifications of this fact, post, in Part IV-E of this opinion.

leaving for good cause under § 28-44-17. Although our Rhode Island Supreme Court does not seem to have accepted (or rejected) this principle, previous decisions of this Court have done so,[8] as have cases from other jurisdictions.[9]

In particular, the Board disqualified Mr. Dunn because it decided he had quit "prior to a formal job offer and his acceptance." Referee's Decision, March 13, 2014, at 2, quoted ante at 3. Thus, in order to be eligible for benefits, the Board required Mr. Dunn to show that he had entered into a formal employment contract with Bank of England before he resigned from Atlantic. But this was not the test the Director applied. In his February 13, 2014 decision, the Director held that Mr. Dunn merely had to show he "had a bona-fide offer of work at the time of [his] leaving." See Claimant Decision, February 13, 2014, in record as Department's Exhibit No. 2A, at 1.

So, our first task must be to decide whose test was proper, the Board's highly formal test or the Director's more flexible test.

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[8] See e.g., cases cited ante at 7, nn. 1 and 2.

[9] See 76 Am. Jur. 2d Unemployment Compensation § 119 and cases cited therein. See also Harrison v. Thurmond, 252 Ga. App. 402, 556 S.E. 2d 490, xxx (Ga. App. 2001)(Applying Caldwell v. Hospital Author of Charlton County, 248 Ga. 887, 287 S.E.2d 14 (1982), Court finds Claimant eligible even though he left prior employment voluntarily, to accept new position).

B

The Proper Test

We begin our evaluation of this issue from first principles. Obviously, the legislature, in enacting Employment Security Act, would not want to encourage Rhode Island's workers from quitting current jobs prematurely by subsidizing those who have left their positions precipitously by granting them unemployment benefits. Thus, it is certainly important for some clear line of demarcation to be established so that those who have tendered imprudent resignations are not rewarded.

The Director drew the line (between those that deserve benefits and those who do not) at those who had received a bona fide job offer. This is, in my view, the better rule. It is consistent with our Supreme Court's jurisprudence in this area, which has not been marked by adherence to formalism, but rather a realistic view of the interactions between employers and workers.[10] And the cases from

[10] In this regard I could cite many decisions of our Supreme Court interpreting the Employment Security Act, but I would point to two in particular — (1) its decisions interpreting § 28-44-68 (denial of between-term benefits to educational employees) including its most recent pronouncement, Elias-Clavet v. Department of Labor and Training Board of Review, 15 A.3d 1008, 1014 (R.I. 2011)(rejecting notion that phrase "reasonable assurance" is a guarantee of future employment), and (2) Kane v. Women and Infants Hospital, 592 A.2d 137, 139 (R.I. 1991), in which the Court eschewed formalisms and

this Court have traditionally focused on whether the Claimant had received a "definite" job offer.[11]

And it appears that nationally, the cases seem to turn on whether the claimant acted in response to a "bona fide" offer or a "firm" offer.[12] For instance, in Claim of Kennedy, 294 A.D.2d 700, 741 N.Y.S.2d 354 (App. Div. 2002), the issue was phrased thusly —

> … A claimant who leaves his job based on an unfulfilled expectation of obtaining new employment may be disqualified from receiving benefits unless it can be shown that the claimant was given "a firm offer of new employment" prior to resigning. … While claimant herein undoubtedly thought he had received a firm offer of employment, there has been no showing that the prospective employer gave him either a definite starting date or informed him of the specific amount of his salary. In the absence of this fundamental information, the negotiations were still too indefinite to constitute the requisite "firm offer" that would render claimant qualified to receive benefits. …

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directed that those workers who quit in the face of a threatened termination will have their claims analyzed under § 28-44-18 (firing for misconduct) and not under § 28-44-17 (voluntary leaving without good cause).

[11] See Deion, ante at 7, n. 1.

[12] See Claim of Kennedy, 294 A.D.2d 700, 741 N.Y.S.2d 354 (App. Div. 2002). See ANNOT., Unemployment compensation: leaving employment in pursuit of other employment as affecting right to unemployment compensation, 46 A.L.R. 5th 659 (1997).

Kennedy, 294 A.D.2d at 700, 741 N.Y.S.2d at 355 (citations omitted).[13] See also Horvath v. Review Board of the Indiana Employment Security Division, 503 N.E.2d 441, 443-44 (Ind. App. 1987)(Finding Claimant "previously secured" new employment prior to submitting resignation which constituted "firm" offer despite lack of starting date citing Indiana Code 22-4-15-1).

C

The Evidence of Record

And so we shall be required to determine whether the Claimant satisfied this test. But before we can do so, we must examine the testimony and evidence of record. Claimant Dunn testified first. Referee Hearing Transcript, at 15 et seq. He set out the timetable of his move to Bank of England thusly —

> Well, it was certainly during that week I was down in Georgia, that's really where a lot of those, I think it was all the week prior to November 25th or whatever that particular date is. And while I was down there I was um, you know, executing those documents and then sending them back to them. I think the actual phone call, you see, I was called by Richard (inaudible) of (inaudible) Bank of England, I used to work with that state bank and he called me and asked me if I was interested in an opportunity and I said, I would certainly consider it and then, you know, looking at my pipeline at

[13] Also, from New York, see Curran v. Levine, 41 N.Y.2d 856, 362 N.E.2d 260, 393 N.Y.S.2d 709 (1977) summarily reversing Claim of Curran, 50 A.D. 2d 681, 375 N.Y.S. 2d 202, 203 (App. Div. 1975), adopting rationale of Dissent of Sweeney, J. of Appellate Division, who found "firm" offer had been communicated to Claimant.

> Atlantic Home Loans which was basically nothing, they offered some consideration, I think I actually know somebody that works there, I used to work with years past and I talked with him and he was very upbeat about the place, thought there were good leads and that type of thing, so I thought it might be a good move and that is certainly what had started the back and forth of getting the offer, I don't know if I actually got an offer letter, but I got this contract and started that whole process, sometime in the week, within a couple of weeks of 11-25.

Referee Hearing Transcript, at 15-16. Now, at this point, Referee Vukic posed a series of questions in order to fill in gaps in the time line.

First, he asked when the discussions rose to the level of a bona fide job offer. Referee Hearing Transcript, at 16. Mr. Dunn responded that on November 20, 2013 (as seen in an e-mail from Anthony), he was requested to review the contract and return it. Id.[14] Hearing this, the Referee asked if he accepted the offer. Id. Mr. Dunn said yes — he told them he would come-by in the morning to execute it. Referee Hearing Transcript, at 16-17. The Referee responded that he did not have before him an executed (signed) contract. Referee Hearing Transcript, at 17. Claimant said he did not retain a copy — though it could be obtained; he did not think it would be necessary. Id.

[14] On November 20, 2013 an e-mail was sent from Mr. Anthony Senerchia of Bank of England with Mr. Dunn's employment contract attached. See Claimant's Exhibit 1B. That contract was executed shortly thereafter.

Then, the Referee told the Claimant that, in the absence of a formal resignation letter, he felt the record was vague regarding the precise date of his resignation from Atlantic. Referee Hearing Transcript, at 17. Mr. Vukic then asked Claimant if his time in Georgia was before or after his resignation. Referee Hearing Transcript, at 17-18. Mr. Dunn responded that he met with the representatives of Bank of England before he went to Georgia and while he was in Georgia he got the e-mail with the contract which was signed. Referee Hearing Transcript, at 18-19.

Regarding his resignation from Atlantic, Mr. Dunn said he did not want to resign until he knew he had something in place. Referee Hearing Transcript, at 20. He told George Devine at Atlantic of his decision on the 24th — though he admitted he was not sure of the date. Referee Hearing Transcript, at 20, 21. After which, Claimant said — "[George] reached out for me at some point beyond that for a letter of resignation, which [he] did." Referee Hearing Transcript, at 20. The Referee then reminded him the date of the letter was November 22, 2013. Referee Hearing Transcript, at 21.[15]

[15] On November 22, 2013, Mr. Dunn submitted his written resignation to Mr. George Devine by e-mail. See Employer's Exhibit No. 1, at 5.

On behalf of Atlantic, Ms. Campigotto stated that they were notified on November 12, 2013 by Mr. Devine that Mr. Dunn was leaving (effective November 10, 2013). Referee Hearing Transcript, at 21-22. Earlier, on November 12, 2013, Mr. Devine reported to Ms. Campigotto that Mr. Dunn had resigned over the weekend. See Employer's Exhibit 1, at 6.

D

And there is no question that Mr. Dunn did in fact work for Bank of England after leaving Atlantic. There is also no question that the sequence and date of events in this case is rather muddy. And certainly a fact-finder has the discretion to date these events based on what we might call soft evidence (oral communications, generally) or on hard evidence (written, signed communications). Now, our sense of fairness would be more satisfied if the Referee took a consistent[16] approach to these questions — after all, symmetry has a pleasing esthetic quality. But it seems that Referee Vukic did not; instead, he took a mixed approach to the resolution of these issues.

[16] As Mr. Emerson said — "A foolish consistency is the hobgoblin of little minds …." Ralph Waldo Emerson, Essays, quoted in Bartlett's Familiar Quotations, at 455 (17th edition, 2002).

Specifically, Referee Vukic accepted that Claimant Dunn quit Atlantic by speaking to Mr. Devine (and not when he submitted his resignation); but, he would not find Mr. Dunn was hired by Bank of England until the execution of the employment contract. However, to put the matter quite simply, there is simply no requirement of consistency in the adjudication of these matters.

Accordingly, I must conclude that the Referee — based on the record before him, which in large part consisted of Claimant's testimony — was fully justified in finding that Claimant quit for personal reasons and not for grounds that would constitute "good cause" within the meaning of § 28-44-17.

E

There is one other issue presented in this case which, although it was ignored by the Board of Review, I believe deserves mention — which is, whether Mr. Dunn could ever have been be said to have left Atlantic for good cause when the position he took on at Bank of England was for a limited period of time (eight-weeks). To my understanding and recollection, this issue has not been previously considered by our Supreme Court or by this Court. Nevertheless, after giving the question some thought, I conclude that the answer to this question must be no.

I believe that quitting a permanent job to accept a limited-period position will seldom constitute good cause to quit. The purpose of the Employment Security Act is to assist those who are unemployed through no fault of their own. A claimant who accepts a limited-period position knows he or she will be unemployed. Their unemployment is certainly not unforeseeable; it is expected.

I have located one case on point — Solar Innovations Inc. v. Unemployment Compensation Board of Review, 38 A.3d 1051 (Pa. Cmmwlth. 2012). In Solar Innovations a three-judge panel of the Commonwealth Court of Pennsylvania considered a claim for benefits from a Mr. Brandt, who quit a position as a marketing coordinator with the employer in order to accept a new position with a temporary staffing agency. Solar Innovations, 38 A.3d at 1053. It was also revealed that he had requested Solar Innovations to reduce his hours so that he could pursue his education. Id., at 1053-54. Unfortunately, the position lasted only about one month. Id., at 1053.[17]

Now, the Court could have decided the case on the fact that Claimant really did not want to work full-time, but fewer hours, so that he could further his education. But, it did not. Instead, it considered the more theoretical question of

[17] A representative of the staffing agency testified that positions such as the one Claimant took usually last one to six months. Id., at 1054.

whether one who quits a permanent job to take a temporary one can ever be determined to have quit for a compelling reason. Id., at 1056. The Court answered in the negative. Id., at 1058-59. In general, allowing for the extraordinary case, I must agree.

F

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decision of the Board of Review must be upheld unless it was, inter alia, contrary to law, clearly erroneous in light of the substantial evidence of record, or arbitrary or capricious. When applying this standard, the Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact, including the question of which witnesses to believe. Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[18] Accordingly, the Board's decision (adopting the finding of the Referee) that Claimant voluntarily terminated his employment without good cause within the meaning of section 17 — because he quit before he received a bona fide offer

[18] Cahoone, ante at 9, n. 5, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws § 42-35-15(g), ante at 8-9, and Guarino, ante at 9, n. 4.

from his new employer — is not clearly erroneous and is supported by reliable, probative, and substantial evidence of record and must be affirmed.

V
CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review regarding claimant's eligibility to receive unemployment benefits was supported by the reliable, probative and substantial evidence of record and was not clearly erroneous. Gen. Laws 1956 § 42-35-15(g)(5).

Accordingly, I recommend that the decision of the Board of Review in the instant matter be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

JANUARY 9, 2015